

U.S. National Contact Point
OECD Peer Review Annex 1 Report



August 10, 2017

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Executive Summary

The Office of the U.S. National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (“the Guidelines”) welcomes the opportunity to participate in a [Peer Review](#) through the OECD. The U.S. NCP wishes to thank the NCPs of Denmark, Mexico, and Switzerland and members of the OECD Secretariat for volunteering their time and expertise for this exercise. After completing the Peer Review, the United States will be the fifth of seven G7 countries and the 15th of 47 NCPs to complete an NCP Peer Review. Through this process, the U.S. NCP hopes to identify ways in which the Office can further advance the effectiveness of the Guidelines.

Since the beginning of its work in 2000, the U.S. NCP¹ has undergone a series of updates in processes, procedures, and structure to improve its performance, increase transparency, accessibility, visibility, and accountability, and respond to stakeholder input. These improvements include:

- Standardized the Specific Instance process by publishing written procedures online to explain how to use the NCP mechanism, including step-by-step submission guidance;
- Created the [U.S. NCP website](#) which includes information on the U.S. NCP’s rules of procedure, processes, and contact information, including promoting upcoming events;
- Issued Final Statements for “Specific Instances” (i.e., cases) to promote transparency that included recommendations for the parties, in line with the Guidelines;
- Secured support for the NCP’s work at the highest levels of government through a [G-20 Leaders Declaration](#) in 2017 and a [G-7 Leaders Declaration](#) in 2015, both by heads of state voicing support for the OECD Guidelines and the NCP mechanism;
- Created the [Stakeholder Advisory Board](#) to the U.S. NCP comprised of leaders from business and members from civil society to advise the NCP on promoting and facilitating the implementation of the Guidelines and to encourage the use of the Specific Instance process;
- Increased outreach with all stakeholders throughout the United States and globally to publicize the NCP’s work, encourage implementation of the Guidelines, use of the Specific Instance process, and implement the OECD sector-specific guidance; and,
- Solicited stakeholder feedback through speaking engagements, and constructing forums and platforms for stakeholders to share input and advice.

This report provides an extensive overview of the Office of the U.S. NCP including:

- Institutional history;
- The role and responsibilities of the Office within the larger U.S. government;
- Framing the work of the U.S. NCP within the U.S. context;

¹ Throughout this document, “The U.S. NCP” and “Office of the U.S. NCP” are used interchangeably.

- The Specific Instance processes including statistics with findings and impact; and,
- Proactive Agenda efforts; and
- Finances and budget.

In order to provide a full picture of the Office’s work, this report is a complement to the [U.S. NCP Fact Sheet](#), [U.S. NCP Guide](#), the stakeholder survey responses, Chart of U.S. NCP Specific Instance cases, [Final Statements](#), and [2014-2015](#) and [2016](#) U.S. NCP Annual Report. The U.S. NCP looks forward to this opportunity to document its strengths and identify areas of improvement that will further advance the purpose and utility of the U.S. NCP process.

U.S. NCP Office’s Institutional Arrangement and Context

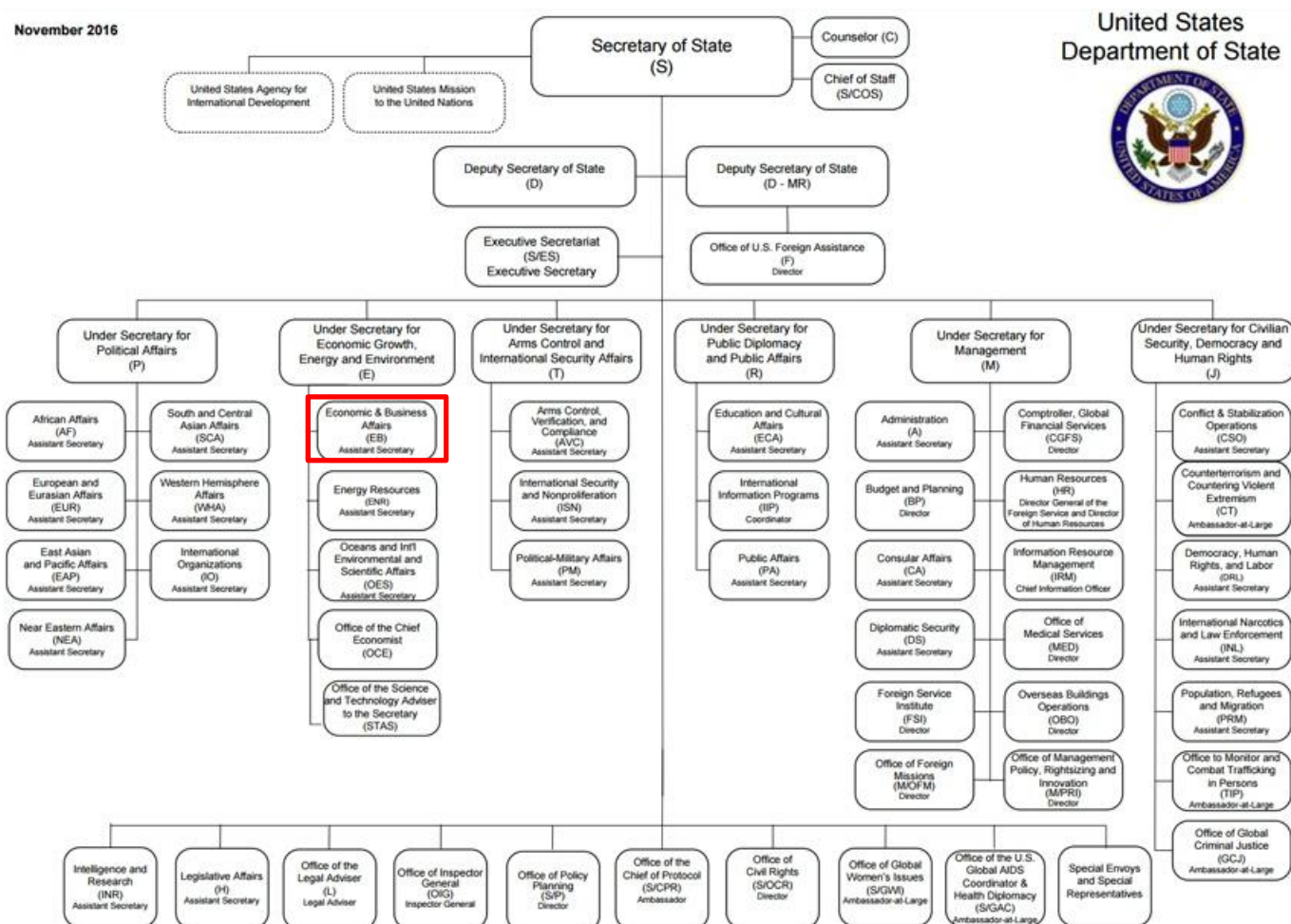
Institutional Arrangement

The Office of the U.S. NCP is [housed](#) within in the Economic and Business Affairs Bureau (EB) of the U.S. Department of State. The Senior Advisor for Corporate Responsibility, [Melike Ann Yetken](#), holds the position of U.S. NCP and supervises three officers, Alan Krill, Erin Clancy, and one contractor who has been hired temporarily to assist with the Peer Review, Sherin Nassar. The U.S. NCP also oversees the “Responsible Business Conduct” (RBC) portfolio housed in the same office, the Office of Economic Policy Analysis and Public Diplomacy, in EB. The United States views RBC as a broad concept that is based on the idea that business can perform well while doing good and that governments should facilitate the conditions for RBC to take place. This work includes interagency coordination on all RBC efforts, staffing of the RBC committees and bureau at the OECD, coordinating the [Secretary of State’s Award for Corporate Excellence](#), an award that recognizes U.S. firms that uphold high standards of RBC and represent American values in the way they do business, as well as leading the [Advisory Committee on International Economic Policy](#), the State Department’s premier senior executive stakeholder advisory body on economic issues. Placement within EB has presented a unique opportunity for the U.S. NCP to build trust with business stakeholders who actively engage with the Bureau and further inform them of the benefits of participating in the Specific Instance process.

Context within the U.S. Government

The Office of the U.S. NCP has worked to embed the NCP system into a larger U.S. Department of State agenda on RBC. As a core component of the RBC portfolio, the Office of the U.S. NCP has engaged with the private sector, civil society including non-governmental organizations, labor, and academia, and foreign governments on RBC, including providing information about the NCP Specific Instance process and how this mechanism is a core component of the United States’ RBC toolkit. Furthermore, the Office of the U.S. NCP has capitalized on opportunities to further align the objectives for the NCP mechanism and State

Department RBC agenda, including through modernizing the Secretary of State's [Award for Corporate Excellence](#) to correlate award categories with the Guidelines.



The U.S. NCP has also taken a leadership role within the broader U.S. government to lead interagency policy coordination of the [U.S. National Action Plan on Responsible Business Conduct](#). This National Action Plan incentivizes and promotes RBC with stakeholders, enhances interagency coordination, encourages higher standards globally, and facilitates conditions for U.S. companies to achieve their RBC goals. Outcomes from the National Action Plan included a commitment to complete the U.S. NCP Peer Review in the fall of 2017 and also to create a website dedicated to centralizing government resources and tools on RBC for stakeholders, among other outcomes.

These efforts have helped to promote the NCP responsibilities and RBC agenda, and elevated the NCP's work and connecting it with broader RBC policies. This has led to senior administration support for the NCP, including the 2017 [G-20 Leaders Declaration](#) highlighting the OECD Guidelines and the work of the NCPs; securing participation of then-Secretary of State Hillary Clinton in the formal adoption of the updated Guidelines in 2011 and securing

commitments related to the NCP and Peer Review in [a 2015 G7 Leaders Statement](#) and [a May 2017 G-20 Labor and Employment Ministers Declaration](#). Additionally, the then Assistant Secretary for Economic and Business Affairs raised the NCP's work at a Chiefs of Mission Conference with over 100 ambassadors to further gain senior coordination abroad on RBC goals and highlight the important tool the NCP mechanism can serve for embassies and consulates.

U.S. NCP's Role, Function, and Accountability

The U.S. NCP's three roles are:

- **Promote awareness and encourage implementation of the Guidelines** to business, labor, and members of civil society, the general public, and the international community.
- **Facilitate practical application of the Guidelines** by bringing business and civil society together to identify potential and emerging RBC-related risks and discuss appropriate actions and responses under the Guidelines.
- **Offer a “Specific Instance” mediation process** to be used when a party raises allegations against an MNE's operations, focusing on finding a resolution between the parties through mediated dialogue.

1) Promote Awareness and Encourage Implementation of the Guidelines

The U.S. NCP is committed to its obligation to further the effectiveness of the Guidelines by undertaking promotional activities to raise awareness of the Guidelines among diverse stakeholders, including representatives of business, civil society, the general public, and international organizations.

The U.S. NCP offers itself as a resource to all of stakeholders, as well as to U.S. government agencies and U.S. embassies around the world. The U.S. NCP welcomes the opportunity to meet with groups or individuals and to speak at meetings and conferences. The U.S. NCP also regularly hosts training for U.S. government personnel on the Guidelines, including for the U.S. NCP's mediators. The Office has developed training for U.S. diplomats around the world in order to further integrate instruction on RBC and the Guidelines into their work, including those who focus on economic, trade, and labor issues. The U.S. NCP encourages them to conduct their own training on the Guidelines and provide information on the NCP role to their stakeholders once abroad. The U.S. NCP conducts significant outreach to inform diverse stakeholders about the NCP role and benefits of the Specific Instance process. For instance, since 2016, the Office of the U.S. NCP has engaged with 2,679 stakeholders to increase awareness of the Guidelines, the U.S. National Action Plan on Responsible Business Conduct, and Specific Instance process.

2) Facilitate Practical Application of the Guidelines – the “Proactive Agenda”

The May 2011 update of the Guidelines provided that the OECD, NCPs, and stakeholders would work together on a [“Proactive Agenda.”](#) To that end, the U.S. NCP engages in the OECD

multi-stakeholder process, which provides stakeholder the opportunity to work alongside companies in developing strategies to avoid risk of adverse impacts by companies. The U.S. NCP uses sector specific guidance to:

- support the positive contributions enterprises can make to economic, social, and environmental progress;
- participate in collaborative initiatives to identify and respond to risks of adverse impacts associated with particular products, regions, sectors or industries;
- consider new developments and emerging practices concerning RBC; and,
- promote the Proactive Agenda and OECD Guidelines.

The U.S. NCP coordinates with subject-matter experts within the U.S. government to determine the best lead-officer to represent the United States in various [Proactive Agenda guidance processes](#): [agriculture](#), [minerals](#), [responsible supply chains in garment and footwear](#), the [financial sector](#), and [stakeholder engagement in the extractive industries](#). The U.S. NCP has found this approach to be effective, as it diversifies the experts that participate in the OECD process and allows for new U.S. government personnel to engage with the OECD.

3) Offer Specific Instance Mediation

As a part of its core function, the U.S. NCP addresses Specific Instances with regard to the conduct of an enterprise operating or headquartered in the United States. The Office of the U.S. NCP handles such Specific Instances in accordance with its procedures, which are based on the [Guidelines](#), the Procedural Guidance for NCPs (pages 73-75 [here](#)), the Commentary on the Procedural Guidance for NCPs (pages 77-79 [here](#)), and are outlined in its publicly available [U.S. NCP Guide](#).

In this effort, the U.S. NCP's primary function is to assist affected parties, when appropriate, in their efforts to reach a mutually satisfactory resolution through the offer of mediation. **The U.S. NCP does not make a determination as to whether the enterprise that is subject to the Specific Instance has acted consistently with the Guidelines, nor does the U.S. NCP have legal authority to investigate, prosecute or adjudicate issues submitted under this process. The Office of the U.S. NCP makes clear that acceptance of the Specific Instance is not a determination on the merits of the claims presented, but merely an offer to facilitate neutral, third-party mediation or conciliation to assist the parties in voluntary, confidential and good faith efforts to reach a cooperative resolution of their concerns. The U.S. NCP sets clear expectations for participants by clearly stating in its procedural guidance that entering into such mediation or conciliation in no way implies that the parties will reach agreement. In mediation, the parties are responsible for arriving at their own solution, and the process is designed to create an environment for cooperative problem solving between the parties.**

Acting impartially and equitably, the U.S. NCP prioritizes transparency, clear timelines, predictable procedures, and accessibility to stakeholders. The U.S. NCP will contribute to resolving issues that arise in relation to the implementation of the Guidelines.

Interagency Working Group (IWG)

The Office of the U.S. NCP works with partners to support and inform its work. In order to operate impartially, avoid potential conflicts of interest, and consult experts, the Office of the U.S. NCP consults regularly with a broader group of U.S. government subject matter experts, called the Interagency Working Group (IWG), which includes representatives from the:

- Agency for International Development;
- Department of Agriculture;
- Department of Commerce;
- Department of Labor;
- Department of State;
- Department of the Treasury;
- Export-Import Bank;
- Environmental Protection Agency;
- General Services Administration;
- Millennium Challenge Corporation;
- Office of the U.S. Trade Representative; and,
- Overseas Private Investment Corporation.

Within the Department of State, officials can include the Office of the Legal Adviser; the Bureau of Economic and Business Affairs, the Bureau of Democracy, Human Rights and Labor; the Bureau of Oceans and International Environmental and Scientific Affairs; regional country desk officers; and officers at U.S. missions abroad, as appropriate. As issues arise related to Specific Instances, the IWG helps the U.S. NCP remain informed on U.S. government positions on related issues and provides additional support.

Stakeholder Advisory Board (SAB)

In 2011, the [Advisory Committee on International Economic Policy \(ACIEP\)](#), the Department's leading stakeholder committee to engage on international economic issues, recommended the Bureau of Economic and Business Affairs (EB) create the [Stakeholder Advisory Board](#) (SAB) to the U.S. NCP. In January 2012, the State Department established the SAB, as a subcommittee of the ACIEP, to promote and facilitate the implementation of the Guidelines and encourage the use of the NCP Specific Instance process as a means to resolve disputes and promote RBC. Additionally, based on the ACIEP's feedback and to further the independent nature of the U.S. NCP mechanism, the U.S. NCP created a new position (the one Melike Yetken now holds) for its role that is separate from the U.S. government's investment promotion responsibilities.

SAB members are experts from a wide variety of backgrounds in business, labor, civil society, and academia, who possess experience useful for contributing to the work of the U.S. NCP and the U.S. government's RBC agenda.

The [Federal Advisory Committee Act](#), under which the ACIEP and SAB are formed, requires the committee membership be "fairly balanced in terms of the points of view represented and the functions to be performed." As a way of fulfilling this requirement, approximately half of the SAB members are expected to be from the business community, while the other half are expected to be stakeholders from civil society, including representatives from labor, trade unions, and NGOs. Members of academia may also be appointed to the SAB. The number of members is not fixed and the SAB may be enlarged or reduced in size as necessary to meet its objectives as a subcommittee of the ACIEP. SAB members are appointed in their individual capacity and the SAB meets quarterly.

In 2016, the SAB was restructured to meet the current needs of the Department. The U.S. NCP is the chair, working in consultation with two vice-chairs (one from civil society and one from business) on setting the agenda. The U.S. NCP consulted with the SAB members when restructuring and sought their input on the [Terms of Reference](#) (TOR), which are now publicly available on the U.S. NCP's website. EB identified that the above-described balance of members was in line with the other ACIEP subcommittees and other NCP's advisory bodies. Before the restructuring, from 2012-2016, the SAB had two co-chairs, one from civil society/labor and one from business, who worked with the U.S. NCP to coordinate meetings. The updated restructuring has led to more balanced discussions, greater participation, and more substantive engagement. The TORs reflect that EB will consider a review of the TORs in two years.

The U.S. NCP engages extensively with SAB members as they help to express stakeholders' views, and often indirectly represent hundreds of other stakeholders. For instance, labor organizations, such as the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), a key stakeholder for the U.S. NCP, is made up of over fifty-six national and international unions, together representing more than 12 million active and retired workers. The AFL-CIO is represented on the U.S. NCP's SAB; therefore, while the membership of the SAB is not large, its members represent a great number of stakeholders.

In February 2014, the SAB released an extensive [report](#) on the operations of the U.S. NCP that included 63 recommendations. In response to the report, the U.S. NCP set about implementing the recommendations made, completing 99 percent of those recommendations, and published a public [letter](#) to reflect those updates.

Peer Learning and Coordinating with Other NCPs

The U.S. NCP has participated and benefited from engagement with NCP peers. In addition to attending and serving as an active participant in all OECD Working Party on Responsible Business Conduct and NCP Network meetings in Paris. The U.S. NCP has participated in four Peer Reviews (Japan, Italy, Denmark, and Germany), as well as NCP Peer Learning activities in Austria, Hungary, Poland, Israel, Italy, and the United Nations Business and Human Rights Forum.

The U.S. NCP has also worked closely to ensure that other NCPs are actively consulted when their interests are represented in Specific Instances the U.S. NCP receives. This includes consulting with the OECD Secretariat, as appropriate, for assistance or clarifications. The U.S. NCP also takes its role seriously as a supporting NCP and offers its assistance to other NCPs on cases where the U.S. NCP may be helpful, including through in-person, e-mail, and phone consultations. Given the U.S. context, the U.S. NCP's processes vary from other NCPs across the globe, which can, at times, lead to differing interpretations between the U.S. NCP and other NCPs on how to handle a particular Specific Instance. This can affect decisions on which NCP should take the lead or play a supporting role on a Specific Instance. Regardless, the U.S. NCP always seeks to work collaboratively with other NCPs, whether in a lead or supporting role, including providing relevant information in a timely manner. In fact, since 2012, the U.S. NCP has consulted on approximately nine cases where other NCPs have led.

U.S. NCP Culture and Context

In preparation for the Peer Review on-site visit, this section describes context and cultural issues that contribute to the work of the U.S. NCP and impediments to the possibility of mediation. While the Guidelines provide globally-relevant and consistent principles, cultural impact and understanding are critical to appreciating the nuances of implementation of the Guidelines as well as acceptance of the offer of mediation. The Guidelines' principles are meant to be a floor not a ceiling and are to work hand-in-hand with laws in the country. The following information provides the context for the U.S. NCP's Specific Instance process, while the next section will delve further into those processes.

- **Size of the United States:** The size of the United States leads to a diverse array of views, stakeholder groups, perceptions, opinions, and knowledge of the Guidelines, as well as numerous stakeholders with whom to engage. Within the United States, there are approximately six million companies, including some of the largest multinational enterprises in the world, 1.5 million NGOs, and over 100 labor unions with headquarters all over the country.
- **U.S. Litigation Environment:** Many companies are highly concerned about potential lawsuits. The numerous reasons for this include that America's legal culture has afforded litigants a great deal of room to pursue legal action. The litigious environment plays out within the U.S. NCP process as some companies turn down mediations out of fear of

disclosing information that could be leaked by the submitting party leading to potential lawsuits and extensive legal costs or even reputational risks for the company. This legal environment also means that there can be distrust between companies and the submitters and perceptions that submitters have politicized priorities when using the Specific Instance process. This can cause tension between parties, including companies declining the offer of mediation and concerns about the U.S. confidentiality procedures not being strong enough to protect against the leaking of materials.

- **Labor Unions:** Labor unions in the U.S. have historical importance in American history for their role in protecting all workers from poor working conditions, long hours, and advocating for increased pay since the early 1820s. While union density in the U.S. decreased through the 20th century, many American labor federations remain mobilized and have increased focus on enhancing working conditions globally. Connections to international unions have allowed American labor federations like the AFL-CIO to establish the partnerships with unions and workers in other countries, and facilitate access of marginalized workers and unions to the U.S. NCP process. In addition, in the absence of any other cross border mechanism to address labor issues, U.S. unions and federations have identified the U.S. NCP process as a tool to encourage U.S. companies to improve labor standards. Accordingly, domestic and international unions are often the primary users of the U.S. NCP Specific Instance process. Since 2012, unions have made up 72 percent of our Specific Instance submissions while NGOs have made up 17 percent. Given this significant participation, the U.S. NCP actively informs and engages with U.S. labor unions.

U.S. NCP Structure and Mediation Processes

The U.S. NCP's primary function is to offer mediation services to assist affected parties, when appropriate, in their efforts to reach a mutually satisfactory resolution through voluntary mediation. The U.S. NCP generally addresses Specific Instances for the conduct of an enterprise operating or headquartered in the United States. In some cases, the U.S. NCP may play a supporting role for Specific Instances involving a U.S.-headquartered firm, if there is an NCP established in the country in which the alleged issues occurred. If there is no NCP in the country where the issues have arisen and a submitting party has requested the help of the U.S. NCP, the Office of the U.S. NCP will evaluate the situation, vis-à-vis the Guidelines, and determine whether its assistance would be appropriate.

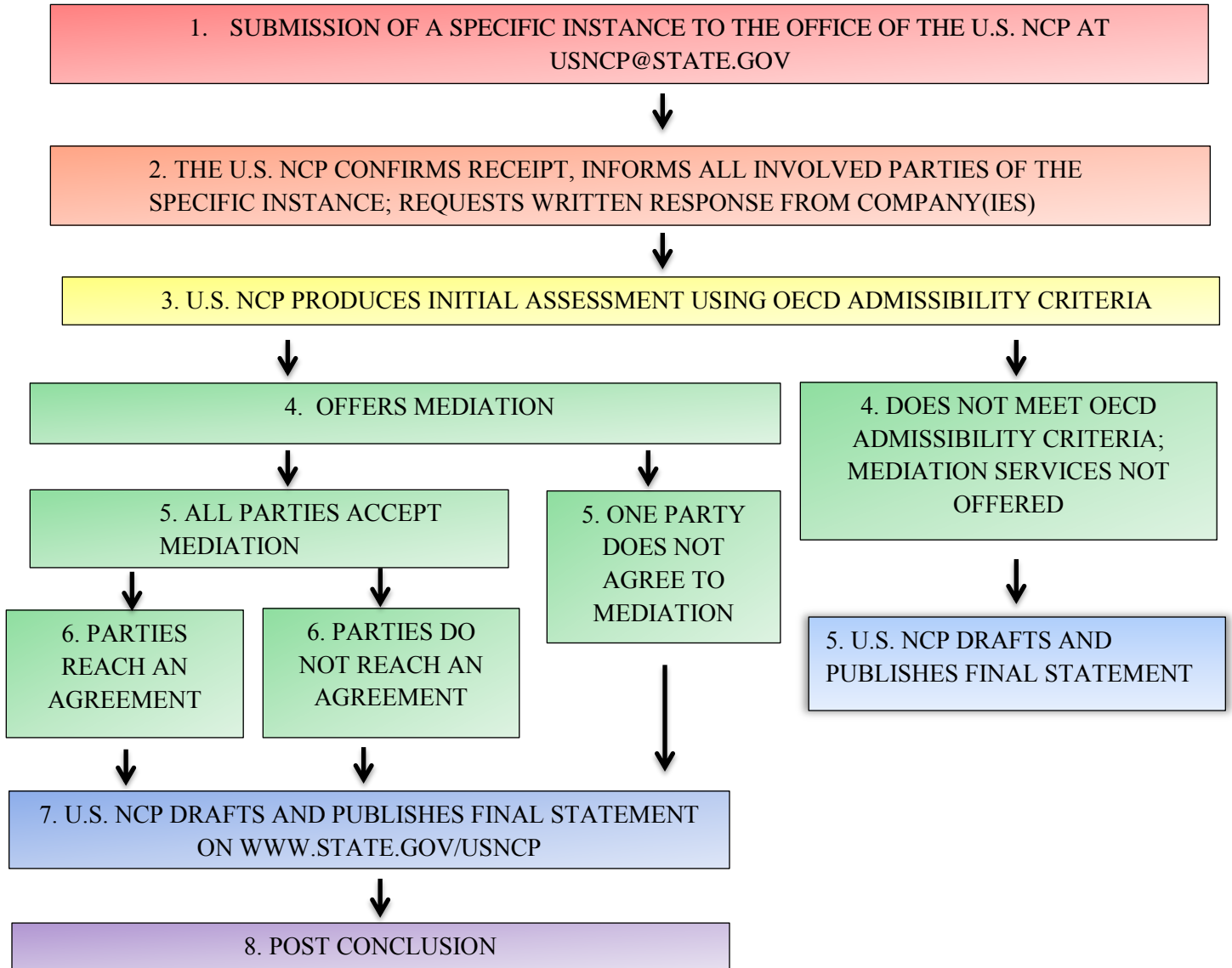
The U.S. NCP Specific Instance Process

Below is a flowchart overview of the U.S. NCP Specific Instance process including and a more detailed breakdown with descriptions of each phase. All of these materials are publicly available on the Office of the U.S. NCP's website (www.state.gov/usncp), included in the

published [U.S. NCP Guide](#) online, and are shared at any speaking engagements so they are widely accessible.

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OVERVIEW: U.S. NCP PROCESS FOR A SPECIFIC INSTANCE



U.S. NCP Detailed Specific Instance Process

Phase 1: Submitting a Specific Instance (SI)

- To initiate the SI process, a submitter sends a SI to the Office of the U.S. NCP at USNCP@state.gov
- The U.S. NCP acknowledges receipt and informs all involved parties of the SI which includes →

Phase 2: Initial Assessment

The U.S. NCP conducts an Initial Assessment using the OECD's Admissibility Criteria:

- The identity of the party concerned and its interest in the matter;
- Whether the issue is material and substantiated;
- Likely link between the enterprise's activities and the issue raised;
- Relevance of applicable law and procedures, including court rulings;
- Treatment of similar issues in other domestic or international proceedings; and,
- Contribution of the specific issue to the purposes and effectiveness of the Guidelines.

- **The Submitter(s):** The U.S. NCP will acknowledge receipt, describing the Guidelines, explain the role of the U.S. NCP and its procedures, and request one lead point of contact.
- **The Company(ies):** The U.S. NCP will inform the company/ies named by sending a copy of the SI, describe the Guidelines and the purpose and function of the NCP, share the U.S. NCP procedures, request a senior point of contact within the company, and request a written response to the allegations made.
- **The Interagency Working Group (IWG):** The U.S. NCP will consult subject-matter experts within the U.S. government on the issues raised.
- **Other NCPs and the OECD Secretariat:** The U.S. NCP will inform and coordinate as appropriate.

Phase 3: Two Options

Mediation Offered

If mediation is offered, parties have the opportunity to accept. If mediation is offered and accepted by the parties, the U.S. NCP will facilitate mediation through either the [Federal Mediation and Conciliation Services \(FMCS\)](#) or the [Consensus Building Institute](#).

Mediation Not Offered

If mediation is not offered, the parties are informed through the Initial Assessment and then the Office of the U.S. NCP drafts a Final Statement that is shared with the parties for fact checking input before it is published on www.state.gov/usncp.

Submitting a Specific Instance

Any entity can submit a Specific Instance to the U.S. NCP at USNCP@state.gov or send it to the U.S. National Contact Point 2201 C Street, NW Room 3844 Washington, DC 20520. To consider a Specific Instance's admissibility, the U.S. NCP requires sufficient detailed information from the submitter. Submitters must have a specified interest in the case, be in a position to supply information about it, and have a clear view of the outcome they wish to achieve, which are conditions stipulated in the U.S. NCP Guide. They must also specify which chapters or paragraphs in the Guidelines they allege have been breached by the company.

Initial Assessment

After reviewing the submission and corporate response, the U.S. NCP produces an Initial Assessment for the parties. The U.S. NCP's Initial Assessment of a Specific Instance is a preliminary written evaluation that determines whether the issues raised merit further examination, in line with the OECD Admissibility Criteria. **Per the NCP's confidentiality policy, the U.S. NCP does not publish Initial Assessments, though in many cases language from the Initial Assessment will be used in the Final Statement once the process is completed.** Specific Instances falling outside the scope of the Guidelines or which have not been substantiated will likely not be offered mediation. The U.S. NCP will consider Specific Instances where issues raised are already partially undergoing parallel proceedings to determine if there may be space for the U.S. NCP to bring parties together to find a broader solution under the Guidelines. If the Specific Instance is deemed to be admissible, the U.S. NCP will offer mediation services.

Mediation

When providing mediation, the U.S. NCP offers the services of objective and neutral mediators employed by one of two entities: [the Federal Mediation and Conciliation Service](#) or the [Consensus Building Institute](#) (CBI).

FMCS is an independent U.S. government agency with more than 65 years of experience resolving labor-management conflicts and promoting cooperative workplace relationships domestically and abroad. FMCS mediators are labor relations and conflict management professionals with years of training and experience in helping parties work through issues that separate them in complex individual, collective, and multi-party disputes. FMCS mediators regularly help parties identify the interests underlying their disputes, improve their communications and problem-solving skills and create an environment in which they can work together and achieve consensus resolutions of both the dispute at issue, and future conflicts that inevitably arise in any workplace.

CBI is a not-for-profit organization founded in 1993 by leading practitioners and theorists in the fields of negotiation and dispute resolution. CBI's mediators bring decades of experience brokering agreements and building collaboration in complex, high-stakes environments — and possess a deep understanding of the OECD Guidelines required to tackle negotiation and

collaboration challenges in their practice areas. In 2017, the U.S. NCP hired CBI to widen expertise of the mediation team after a nine-month contracting process.

In order to introduce each party to their mediators, the U.S. NCP offers to host a one hour information session with each party (separately) during which representatives are consulted about the mediators, can raise any questions or concerns about the mediation process, and can get to know the mediators. Participation in the information session does not indicate agreement to participate in mediation; rather it is an opportunity to inform each party about the process and to build trust with their mediators. The U.S. NCP observes all mediations and, when needed, provides video conferencing for parties who are unable to attend mediations in person. Mediators are selected on a case-by-case basis in accordance with their individual expertise in the specific issues raised in the submission.

For cases that go to mediation, each participant is required to sign a Mediation Agreement, which includes provisions for confidentiality and serves as a non-disclosure agreement. If an agreement is reached in mediation, parties will sign an outcome document reflecting the items agreed to. Parties are also asked to indicate to the U.S. NCP what wording, statement, or documents can be made public in the Final Statement. These steps were added to build trust between parties with the mediators. The U.S. NCP requests outcome documents be published, but ultimately it is up to the parties to identify what they wish to publicly disclose.

Final Statement

At the completion of a Specific Instance process, a Final Statement is published at www.state.gov/usncp detailing the proceedings and the results of the Specific Instance. The Specific Instance process can be considered complete at one of several different points:

1. Mediation is not offered by the U.S. NCP
2. One party declines the offer of mediation
3. Mediation is accepted but the parties cannot reach an agreement, or
4. Parties succeed in reaching agreement in mediation

The Office of the U.S. NCP will publish Final Statements when the Specific Instance has been completed, redacting any sensitive business information either party may request. The U.S. NCP will coordinate with the IWG, relevant NCPs, if applicable, and with the parties on when to end the mediation phase and on what information to include in the Final Statement.

Once the process has been deemed complete, a Final Statement will be drafted by the Office of the U.S. NCP. It will include information on allegations made, including which Guidelines chapters were cited in the Specific Instance submission. Nothing discussed during mediation will be included in the Final Statement without the agreement of both parties, per the confidentiality policy. In the interest of transparency and accountability, where possible and when agreed upon by the parties, the terms of the agreement reached in mediation will be made public.

A draft of the Final Statement will be sent to the parties who will be asked to make any comments and check the facts. The Final Statement will protect information deemed to be sensitive by either party. The U.S. NCP has the discretion to make any necessary changes before sending the final version of the statement to the parties. The Final Statement will include:

- Details of the parties, subject to any need to preserve the confidentiality of sensitive information;
- A summary of the Specific Instance process;
- Substance of the Specific Instance;
- Role of other NCPs, if applicable, and the role of IWG;
- If applicable:
 - information detailing the decision to offer mediation based on the Initial Assessment and admissibility criteria outlined above;
 - information regarding the outcome of the mediation or a statement agreed by the parties which summarizes the outcome;
 - the reason why the mediation talks ended without an agreement;
- If applicable and deemed appropriate by the U.S. NCP, recommendations as to how the Guidelines are to be implemented.

Post-Conclusion

Following the conclusion of the proceedings, the Office of the U.S. NCP may consider requests by the parties to follow-up or monitor the implementation of an agreement reached or recommendations made by the Office of the U.S. NCP. However, such monitoring is done entirely at the discretion of the U.S. NCP and is completed on an exceptional basis, if the U.S. NCP determines this appropriate, and only as the U.S. NCP's resources allow. One year after successful mediation, each party is asked to submit a confidential report to the U.S. NCP on the status of the agreement.

This past year, the Office of the U.S. NCP conducted post-conclusion follow ups with parties from the two Specific Instances where mediations resulted in agreements:

- The International Union of Food, Agriculture, Hotel, Restaurants, Catering, Tobacco and Allied Workers' Association (IUF) and Starwood Hotels & Resorts Worldwide² for their [Specific Instance](#) in May 2016; and,
- Center for Environment and Development with Network to Fight against Hunger and Herakles Farms for their [Specific Instance](#) in July 2015.

Through a formal letter of request via email, the U.S. NCP asked all parties to submit a confidential update to the U.S. NCP on the status of the specific agreement the parties agreed to in their mediation. To ease the burden of the request, the U.S. NCP allowed parties to submit the update in whatever form would be most helpful, including a written response via e-mail or a verbal update over phone, but recommended the parties include the following information:

² In September 2016, Marriott International acquired Starwood Hotels & Resorts Worldwide.

- the status of the implementation of the agreement;
- the summary of the recommendations taken into effect since the Final Statement;
- any continued conversation between the involved parties; and,
- any other relevant information.

All parties participated in the follow up. Per U.S. NCP procedures, follow up information shared from either party was shared with the other side. No parties have requested the U.S. NCP reengage in mediation discussions.

In certain circumstances, the U.S. NCP may consider requests to reopen the offer of mediation after a party has already declined to participate in the process. For example, in a 2013 [Specific Instance](#) involving the International Union of Food, Agriculture, Hotel, Restaurants, Catering, Tobacco and Allied Workers' Association (IUF) and PepsiCo for their operations in the Maldives and Ethiopia, PepsiCo. had initially rejected the U.S. NCP's offer of mediation in 2014. However, after exploring other options to reach a positive resolution with the union, PepsiCo., in 2015, approached the U.S. NCP to reopen the offer of mediation, which the U.S. NCP accepted in an effort to create a positive resolution for the parties. Although the mediation did not lead to an agreement, PepsiCo conducted internal policy changes as a result of the discussions. Specifically, the company stated that it added 1,765 PepsiCo supplier/contractor sites to their Sustainable Supplier Program to assess PepsiCo suppliers and contractors against international human rights standards. PepsiCo reported that of those, 1,178 sites completed human rights self-assessments (modeled after the SEDEX SMETA self-assessment), and 163 were audited against international human rights standards. The company also engaged an internationally recognized human rights non-governmental organization to provide guidance to further strengthen its policies and programs.

Target Timelines

The U.S. NCP is committed to efficient and timely handling of Specific Instances. The U.S. NCP has a general goal of publishing a Final Statement within one year of the submission of a Specific Instance. The timeline allows approximately one to three months for the Initial Assessment, three to six months for mediation (if offered), and one month for drafting the Final Statement. However, this timeline will vary from case to case depending on a number of factors, including whether the Specific Instance goes to mediation and how long the mediation lasts. Experience has also shown that in many cases complex negotiations with suppliers or other partners can be necessary for a company to come to the table, which requires additional time. While the U.S. NCP will insist on timely responses, it will prioritize successful conclusions, which may mean that some cases will extend beyond the target timeline.

Measuring the Impact: U.S. NCP Results

Given that the United States is home to some of the largest multinational enterprises in the world, the U.S. NCP has a large case load of Specific Instances throughout the year. Since 2000, the U.S. NCP has had a total of 45 Specific Instances. Since 2012, after the 2011 revision of the Guidelines, the U.S. NCP has handled 18 Specific Instances. Globally, between 2000 and 2016, the 47 NCPs have received 400 Specific Instance cases³, which means the U.S. has received approximately 11 percent of global cases. With 45 cases since 2000, the U.S. NCP is the second most utilized NCP in the world (the UK NCP has the highest with 48 cases).

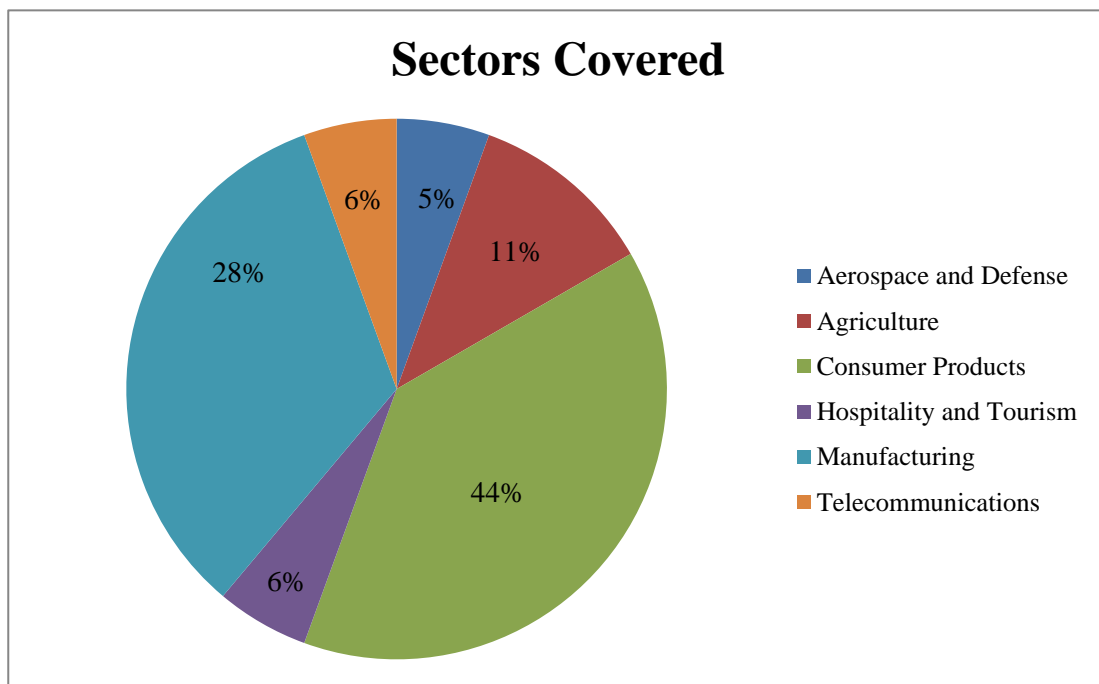
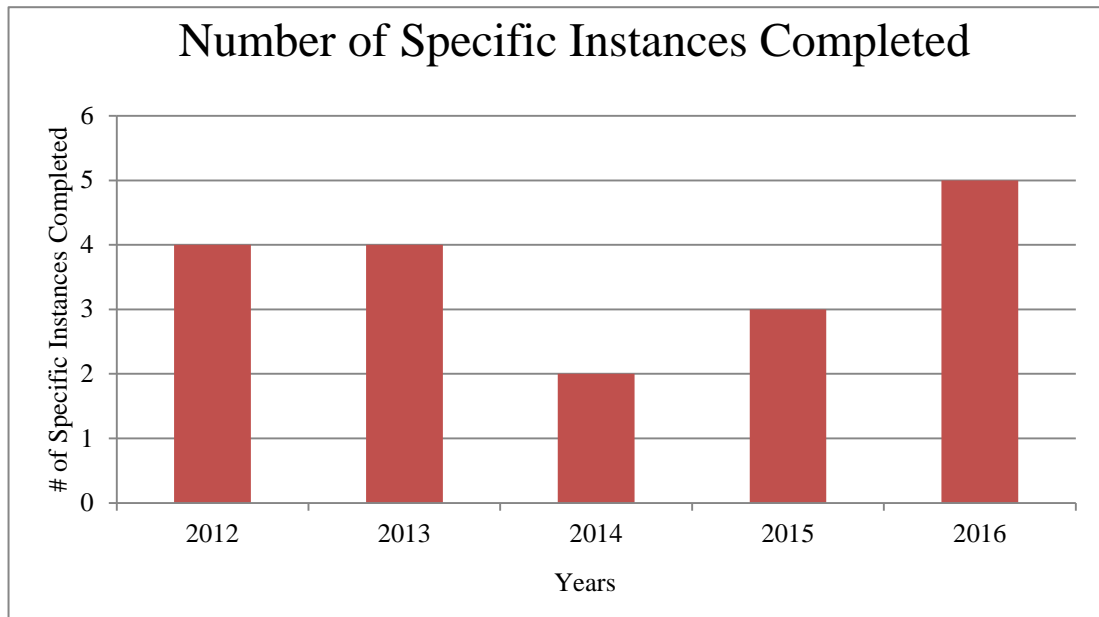
The 2011 revision of the Guidelines provided the catalyst for the Office of the U.S. NCP to create its procedures, look for areas of improvement, and implement them. In order to do this, the Office of the U.S. NCP began collecting statistics on its Specific Instances to analyze trends and measure impact. Since 2012⁴:

- The U.S. NCP has completed a total of 18 Specific Instances.⁵
- As a result of improvements made to the NCP process, three Specific Instances have gone to mediation
- The first Specific Instance that went to mediation was in 2015
- The most cited Guidelines Chapters for U.S. NCP Specific Instances are Chapter V: Employment and Industrial Relations, Chapter IV: Human Rights, and Chapter II: General Policies
- Mediation was offered in 67 percent of Specific Instances (which includes 11 percent of Specific Instances that were offered deferred mediation)
- Of the Specific Instances where mediation was offered, 25 percent accepted mediation
- Of the Specific Instances where mediation was offered and accepted, 67 percent led to a mediated agreement, which is higher than the NCP global average of 47 percent according to the OECD [NCP Highlights-June 2017](#) document
- Sector Represented in Specific Instances:
 - ✓ Agriculture: 2
 - ✓ Aerospace and Defense: 1
 - ✓ Consumer Products: 8
 - ✓ Hospitality and Tourism: 1
 - ✓ Manufacturing: 5
 - ✓ Telecommunications: 1

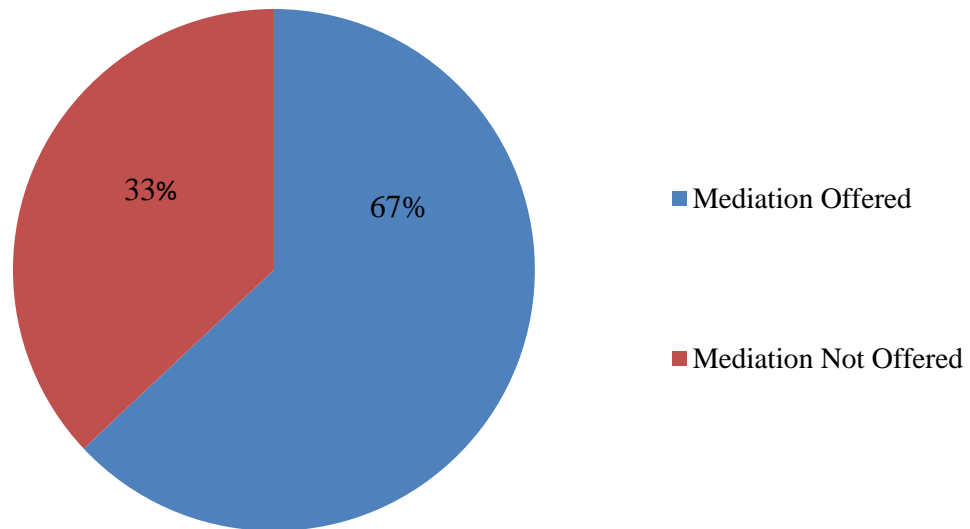
³ [Annual Report on the OECD Guidelines for Multinational Enterprises 2016](#)

⁴ Note: All infographics are for data since 2012

⁵ Completed refers to any case where a Final Statement has been published at www.state.gov/usncp

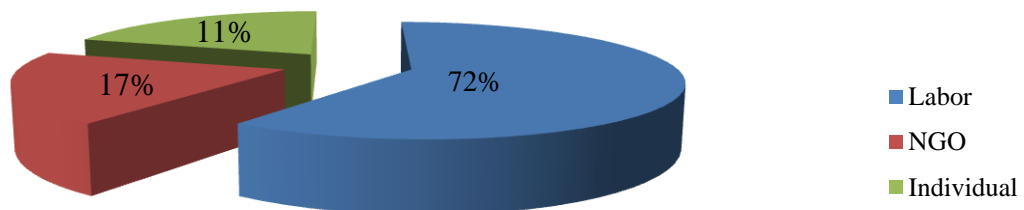


Specific Instance Completed Results



Of the Specific Instances where mediation was offered (12 Specific Instances), 25 percent accepted mediation. Of the Specific Instances where mediation was offered and accepted, 67 percent led to a mediated agreement (two out of three).

Submitters



Confidentiality

From the time that a Specific Instance is submitted, the parties to that Specific Instance are expected to strictly respect the confidentiality of all communications with other parties and with the U.S. NCP, as laid out in the U.S. NCP Guide. A failure to honor confidentiality expectations may be considered bad faith and may lead to the U.S. NCP terminating the process. Information provided by a party to the U.S. NCP will be communicated to the other part[ies] to the Specific Instance, unless the providing party expressly requests that the information, or any part of the information, not be disclosed to any other party and provides a compelling reason to the U.S. NCP for such nondisclosure. The U.S. NCP will treat all information which is communicated to the U.S. NCP by a party to a Specific Instance⁶, including information communicated in reference to a Specific Instance, as confidential, subject to any disclosures required by U.S. law.

The Office of the U.S. NCP strives to be as transparent as possible, while also considering the importance of protecting sensitive business information. The balance the Office of the U.S. NCP has struck between the two allows for stakeholders to be informed on how the U.S. NCP handles Specific Instances but also reassures the business community that participating in the U.S. NCP's process will not jeopardize any sensitive information. As a result, the Office of the U.S. NCP makes clear its confidentiality policy in its U.S. NCP Guide and explains it to the parties of a Specific Instances to ensure it is understood and adhered to. Maintaining this delicate balance remains a consistent challenge since stakeholders from civil society and business having differing opinions on the type of balance the U.S. NCP should strike.

All communication between the U.S. NCP and the parties is confidential as well as all information which is communicated to the U.S. NCP by a party in reference to a Specific Instance. Additionally, the Office of the U.S. NCP shares the Initial Assessment only with the parties and does not publish it publicly. In the interest of transparency, the Office of the U.S. NCP allows parties to publicly reference the existence of the Specific Instance, but they should not disclose information learned during the NCP process.

The U.S. NCP requires that parties uphold confidentiality and requests that parties refrain from campaigning against the other party and/or using the media for any such purpose if mediation is offered and accepted, though the U.S. NCP recommends suspending campaigning for the duration of the Specific Instance process. The U.S. NCP defines campaigning as an entity taking on publicity activities that aim to curry favor for their opinion on a matter, and can include but is not limited to ads, blogs, and dedicated websites that negatively frame the opposing party's views on the issue. The purpose of these campaigning and confidentiality

⁶ This includes parties to the submission, the enterprise concerned, and other parties with whom the U.S. NCP consults.

policies is to facilitate the building of mutual trust, which is an important element for reaching any mediated solution.

Reporting and Maintaining Institutional Memory

The Office of the U.S. NCP reports annually to its SAB, IWG, and the OECD Investment Committee on its structure, promotion, and implementation activities. The Office of the U.S. NCP does not have the obligation to regularly report on its activities to any national authority or body. For the first time, in 2014, the Office of the U.S. NCP publicly posted its [annual 2014-2015](#) report to the Investment Committee and continued the tradition by publishing its [2016 report](#) as well. The U.S. NCP plans to continue posting its reports online for transparency, accessibility, visibility, and accountability.

Additionally, the Office of the U.S. NCP has developed a robust system to ensure a smooth transition of institutional memory in case of key staff turnover. This includes documenting and standardizing the U.S. NCP's Specific Instance process, creating templates for Initial Assessments, Final Statements, and emails to Specific Instance parties notifying them about a case. Additionally, the U.S. NCP official e-mail account (usncp@state.gov) maintains documentation of e-mails involving Specific Instances. Key documents, such as the U.S. NCP Guide, also serve as excellent resources that detail how the U.S. NCP Office operates and have been updated to remain consistent with U.S. NCP policy and procedures.

Communication, Outreach, and Promotional Tools

In order to effectively carry out its mandate, the U.S. NCP undertakes outreach to a range of stakeholders to discuss the Guidelines and the functions of the U.S. NCP and the USG RBC policies more broadly. This outreach includes two main components: 1) communications and 2) event engagement.

Communications

The Office of the U.S. NCP is committed to remaining transparent and visible in its operations. As a result, the U.S. NCP is active on social media to promote events, including through the Bureau of Economic and Business Affairs' Twitter account ([@EconAtState](#)). The U.S. NCP also recently crafted and published its [2017 outreach plan](#), which outlines the U.S. NCP's engagement strategy and targeted metrics of success. Additionally, all past and upcoming events representatives from the Office of the U.S. NCP participate in are listed on the U.S. NCP's [website](#).

Event Engagement

In the past, the U.S. NCP has engaged with four primary audiences at events and engagements: 1) Private sector, 2) Civil society, 3) Attorneys, and 4) NCP counterparts/other

governments. These audiences comprise key stakeholders who help spread knowledge about the Guidelines and NCP mechanisms to their organizations. The U.S. NCP has specifically recognized attorneys as key stakeholders who are often the first contact person in the company to receive the U.S. NCP's information about a Specific Instance submission and the U.S. NCP has found it valuable to inform them about the benefits of the Specific Instance process to increase business participation. Over time, the Office of the U.S. NCP has developed the following factors to better consider which events are best suited to target these audiences and amplify NCP messaging:

1. **Audience:** How do the Guidelines relate to this audience (industry, civil society, academia, lawyers, etc.)? How many engagements has the U.S. NCP done with this stakeholder group this year? Is this a new event/audience for the U.S. NCP? Could OECD due diligence sector projects be relevant to this group?
2. **Location:** Does this help the U.S. NCP reach new locations—and therefore new audiences—inside or outside the United States? Is travel to this location feasible given budgetary constraints?
3. **Follow-Up and Multiplier Effect:** Are there follow-up opportunities beyond this engagement? Could attendees be force-multipliers to spread information about the Guidelines and U.S. NCP beyond this meeting?
4. **Technology & Invitational Travel:** How can the U.S. NCP utilize technology to expand its reach and save financial resources? Is acceptance of particular travel invitations permissible under U.S. government ethics rules?

These factors are coupled with the following metrics of success, which help to evaluate the U.S. NCP's strategic engagement and understand its impact:

- the number of participants and opportunities for follow-up engagement;
- peer learning and capacity building opportunities; and,
- the multiplier effect: publicity generated surrounding the U.S. NCP's engagement.

Outreach

The Office of the U.S. NCP engages in extensive outreach to meet diverse stakeholders and promote the Guidelines. In order to do this, the U.S. NCP:

- maintains an updated [website](#) with a video from the U.S. NCP on the Guidelines in English and French;
- posts a [schedule of past and upcoming events](#);
- speaks at conferences, workshops, and meetings with stakeholders;
- coordinates trainings for government stakeholders on the NCP mediation process; and,
- communicates regularly with the IWG and SAB.

A sample of the type of outreach the U.S. NCP conducts includes presenting in April 2017 at the annual meeting of the Social Responsibility Working group of [IPIECA](#), the global oil and gas industry association for environmental and social issues. This meeting included representatives from Anadarko, API, Bechtel Corporation, BP, Chevron, Conoco Phillips, ExxonMobil, Hess, Marathon, Noble Energy, Occidental, and Shell. Additionally, in May 2017, the U.S. NCP presented at the [Ethical Sourcing Forum](#) where participants included senior sustainability leaders from 150 companies including Apple, Disney, Pepsi, Gap, Macy's, Walmart, and West Elm.

In 2017, the Office of the U.S. NCP published [testimonials](#) from stakeholders about their experience with the U.S. NCP process to build credibility with stakeholders unfamiliar with the U.S. NCP. The Office of the U.S. NCP additionally receives a number of inquiries via phone, e-mail, and in-person about the Guidelines and NCP mechanism. As appropriate, the U.S. NCP responds as well as offers additional time to speak with those inquiring about the intricacies of the U.S. NCP Specific Instance process. Through these outreach efforts, the U.S. NCP ensures that as many stakeholders as possible are aware of the Guidelines and NCP mechanisms.

Between 2016 and as of August 2017, the Office of the U.S. NCP participated in 51 events, targeting 2,679 stakeholders through outreach at:

- Nineteen events with private sector
- Five events with members from civil society
- Five events with attorneys
- Six events with members from academia
- Nine events with NCP counterparts
- Seven events with U.S. Government officials

Finances and Budget

The U.S. NCP to date has been able to meet the expectations of and requests on its office with the current financial and personnel resources. That said, the U.S. NCP anticipates more Specific Instances in the future, and more outreach opportunities, and will continue to evaluate resource challenges and opportunities to further the work of the U.S. NCP. The Office of the U.S. NCP does not have a designated budget; it works within the State Department budget process to receive necessary funds to meet its mandate.